



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable W. K. McClain
Criminal District Attorney
Williamson County
Georgetown, Texas

Dear Sir:

Opinion No. O-4759

Re: Whether it is a violation of the nepotism law (Article 432, Penal Code) for a school district to employ a teacher whose husband and a trustee have a common grandfather.

This is in reply to your letter of August 11, 1942, requesting the opinion of this department upon the above captioned question. You describe the facts as follows:

"I am writing you for an opinion based upon the following facts. In the Andice Common School District there is a trustee by the name of Marshall Davis and a teacher Mrs. M. Q. Stapp. Mr. Marshall Davis's father (Earl Davis) was a half brother to the mother of Mr. M. Q. Stapp, (Mary Davis Stapp.) Earl Davis and Mary Davis Stapp have a common ancestor being their father, Mr. Davis.

"Mrs. M. Q. Stapp is not related to the trustee Marshall Davis by blood but by her marriage to M. Q. Stapp her husband.

"Question: Does the employment by Mr. Marshall Davis, a member of the Board of Trustees, of Mrs. M. Q. Stapp, violate Art. 432 of the Penal Code?"

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Article 432, Penal Code, provides:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. Acts 1909, p. 85, Acts 1915, p. 149."

It is at once apparent that the father of Marshall Davis (the trustee) and the mother of Mrs. Stapp's husband have a common ancestor in their father, Mr. Davis. Marshall Davis and M. Q. Stapp, being descended from a common ancestor, are related by collateral consanguinity. The method of computing this degree of relationship is to begin with the common ancestor and reckon downward. The degree the two persons or the more remote of them is distant from the ancestor is the degree of kinship between them. T. T. R. R. Co. v. Overton, 1 App. C. C., Section 553.

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Thus, Marshall Davis and M. Q. Stapp are related in the second degree by consanguinity. Degrees of affinity are computed in the same manner as those of consanguinity. Opinion No. 0-2648. That is to say Mrs. Stapp is related in the same degree by affinity to Marshall Davis as her husband is related to him by consanguinity.

Since Marshall Davis and M. Q. Stapp have a common ancestor it is of no consequence that their respective mother and father were only half brother and sister. Opinion No. 3016.

This is, therefore, to advise you, and it is our opinion, that for the reasons given and those set forth in Opinions Nos. 0-2648 and 0-3016, (copies of which are enclosed) Mrs. Stapp, the teacher, is related to Mr. Davis, the trustee, in the second degree by affinity and her employment is forbidden by Article 432, of the Penal Code.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 17, 1942

Wm. D. Sullivan

FIRST ASSISTANT
ATTORNEY GENERAL

By *James D. Smullen*
James D. Smullen
Assistant

JDS:EP

ENCLOSURES

